

EXHIBIT 67

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 - - - - -x
6 CYNTHIA RUSSO, et al.,
7 Plaintiffs, No.
8 -against- 1:17-CV-02246
9 WALGREEN CO.,
10 Defendant.

11 - - - - -x
12 Virtual Zoom Deposition
13

14 April 21, 2023
15 9:00 a.m.

16 CONFIDENTIAL DEPOSITION of KELLY LEAR
17 NORDBY, Ph.D., in the above-entitled action,
18 held at the above time and place, taken before
19 Jeremy Richman, a Shorthand Reporter and
20 Notary Public of the State of New York,
21 pursuant to the Federal Rules of Civil
22 Procedure, and stipulations between Counsel.
23

24 * * *
25

1
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3

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PRESENT:
RON MARRAZZO, Videographer
JAMES FARMER, Concierge

* * *

1 K. NORDBY, Ph.D. - CONFIDENTIAL

2 Q. Likewise, in your graduate
3 studies, you also didn't take any
4 pharmacy operations specific courses;
5 is that correct?

6 MS. COLEMAN: Objection to
7 form.

8 A. That's correct.

9 Q. Your dissertation didn't have
10 anything to do with pharmacy
11 operations; is that correct?

12 MS. COLEMAN: Objection to
13 form.

14 A. That's correct. It focused
15 on firm incentives.

16 Q. Do you consider yourself an
17 expert in pharmacy operations?

18 A. No, I do not. I'm an
19 economist.

20 Q. In looking at your CV, you
21 worked at MetLife; is that right,
22 between 1990 and 1993?

23 A. Yes.

24 Q. And you worked for several
25 years at Indiana University as a

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2 research assistant and an interviewer;
3 is that right?

4 A. I had a number of different
5 positions at Indiana University. I
6 taught there as well. I worked for the
7 survey -- Center For Survey Research
8 and the Center For Econometric Model
9 Research as well, and I was a teaching
10 assistant.

11 Q. Is an associate instructor a
12 tenured position?

13 A. It is not.

14 Q. Is it considered adjunct?

15 A. It's similar to an adjunct
16 position. But -- it's similar.

17 Q. Is it accurate to say that
18 you've never been an employee of a
19 pharmacy?

20 A. Yes.

21 Q. Is it accurate to say that
22 you've never been an employee of a
23 pharmacy benefit manager?

24 A. I believe that's accurate,
25 unless MetLife has acquired some

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2 pharmacy benefit manager that I'm not
3 aware of, but...

4 Q. Is it accurate to say you've
5 never been an employee of a third-party
6 payor? You're taking a long time to
7 answer the question. Is it possible
8 that you worked for a third-party
9 payor?

10 A. I guess it depends on if you
11 would include a health insurance
12 company as a third-party payor. I
13 mean, I guess it's a life insurance
14 company, so I guess, no, I guess the
15 answer would be no.

16 Q. Okay. So you were an
17 employee of MetLife?

18 A. Right.

19 Q. Which provides life
20 insurance?

21 A. Yes.

22 Q. But you've never --

23 A. You -- your -- can --

24 Q. Do you want me to start over?

25 A. Yes, why don't you define

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2 "third-party payor," as you're using
3 it?

4 Q. Okay. I'm using "third-party
5 payor" in the same context that you
6 describe third-party payors as being
7 potential class members in this case.
8 This is referring to health insurance
9 providers, do you understand that?

10 A. Yes.

11 Q. So my question is, you've
12 never been an employee of a third-party
13 payor; is that correct?

14 A. That's correct.

15 Q. In fact, you've never been an
16 employee of any person or entity within
17 the pharmacy industry; is that correct?

18 A. As long as you don't include
19 hospitals as within the pharmacy
20 industry, then that would be correct.

21 Q. Were you an employee of a
22 pharmacy at some point -- I mean of a
23 hospital at some point?

24 A. Yes, I was.

25 Q. What hospital was that?

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2 A. Bayshore Community Hospital
3 in New Jersey.

4 Q. And what years were you
5 employed by Bayshore Community Hospital
6 in New Jersey?

7 A. That's when I was in high
8 school and college. So I don't recall
9 the exact years -- actually, it might
10 have been, I'm sorry, it was when I was
11 in -- I did volunteer work there in
12 high school, and then I did have a
13 part-time summer job in college. I
14 forget the exact years. And then in
15 graduate school I worked there
16 occasionally on breaks.

17 Q. Do you understand that when I
18 refer to being an employee, that I'm
19 not referring to a volunteer, correct?

20 A. Right, the volunteer position
21 was when I was in high school. The
22 employee positions were when I was in
23 college and graduate school.

24 Q. Okay. You don't mention that
25 you were an employee of Bayshore

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2 Community Hospital on your CV. Is
3 there a reason for that?

4 A. Yes, I mean, I don't consider
5 it part of my professional experience.
6 It's a part-time job. I had other
7 part-time jobs when I was in high
8 school that are also not on my CV.

9 Q. Is it fair to say that your
10 work at Bayshore did not include you to
11 -- did not include or expose you to
12 pharmacy operations within the
13 hospital?

14 MS. COLEMAN: Objection to
15 form.

16 A. Can you be more specific
17 about, expose me to pharmacy
18 operations?

19 Q. Fair enough.

20 A. Yeah.

21 Q. In your work at Bayshore
22 Hospital, did you participate in the
23 reporting of U&C prices to payors, or
24 any intermediary, as part of the claims
25 process?

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2 MS. COLEMAN: Objection to
3 form.

4 A. I did not.

5 Q. Basically, you're saying that
6 your work at Bayshore is entirely
7 irrelevant to this matter, correct?

8 MS. COLEMAN: Objection to
9 form.

10 A. I'm saying it's, it was not
11 relevant to my testimony in this
12 matter. My testimony in this matter is
13 as an economist, and based on my
14 professional experience and background
15 as an economist, I have knowledge of
16 certain things in the healthcare
17 industry from working in those
18 positions, but it's not relevant to my
19 opinions in this matter.

20 Q. Did the pharmacy at Bayshore
21 County Hospital have a discount savings
22 programs?

23 MS. COLEMAN: Objection to
24 form.

25 A. It's Bayshore Community

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2 Hospital, and it's not something I have
3 any knowledge of either way, I don't
4 know.

5 Q. All right, let's take a look
6 at Exhibit 2 of your report, which is
7 materials considered. Give me just one
8 moment. I think I clicked the wrong
9 button. Okay, for the record, I've
10 marked as Exhibit 529, Exhibit 2 to
11 your report, which consists of
12 materials considered. Is that correct?

13 (Exhibit 529, marked for
14 identification, Exhibit 2 to the
15 expert report of Kelly Nordby,
16 Ph.D.)

17 A. Yes.

18 Q. And are you able to access
19 that document electronically?

20 A. Yes.

21 Q. Does this exhibit list all of
22 your publications since 1998?

23 A. Sorry, I thought we were
24 looking at the Exhibit 2 to my report;
25 is that correct?

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2 Q. It is. Let's go back to
3 Exhibit 1.

4 A. Okay.

5 Q. So I'll direct your attention
6 to the publications and working papers
7 section of Exhibit 1. Does this
8 exhibit list all of your publications
9 since 1998?

10 A. Yes, I believe it does.

11 Q. Which of these publications
12 discussed the calculation of U&C prices
13 in the pharmacy industry?

14 MS. COLEMAN: Objection to
15 form.

16 A. None of these discuss the
17 calculation of U&C pricing.

18 Q. With regard to Exhibit 1,
19 does your CV identify all matters,
20 whether in governmental or court
21 proceedings, or some other form of
22 dispute resolution, like mediation or
23 arbitration, where you were retained to
24 offer an opinion as an expert in the
25 last four years?

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2 follows it would not be a barrier for
3 multiple prescriptions on the first
4 fill, right?

5 MS. COLEMAN: Objection to
6 form and objection to scope.

7 Q. You can answer.

8 A. My understanding, again,
9 about the Garby court's decision
10 regarding this is that they're
11 referring to the \$10 membership fee.

12 Q. Well, that's what my question
13 referred to.

14 A. Yes.

15 Q. So let me ask it again.

16 A. Yes, so they did say they did
17 not view a \$10 membership fee as a
18 barrier.

19 Q. Okay. So my question, then,
20 with that understanding, you would
21 agree that if the Garby court did not
22 view the membership fee as a barrier
23 for one prescription on the first fill,
24 then it follows it would not be a
25 barrier for multiple prescriptions on

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2 the first fill, right?

3 MS. COLEMAN: Objection to
4 form and to scope.

5 Q. I think you gave --

6 A. That wasn't part of my
7 assignment, to review the Garby
8 decision. I think, again, my opinions
9 about the Garby decision are what it
10 found with respect to allocating the
11 membership fee, and with respect to the
12 barrier, it is specific to the fee in
13 that case, which was \$10, which is
14 different from the fee in this case.

15 Q. Okay, but I asked you a very
16 specific question, and you said yes --

17 A. Yes, I think they said that
18 they didn't consider the \$10 membership
19 fee to be a barrier.

20 Q. All right. And it would
21 follow, then, that if, on the first
22 fill, there were multiple
23 prescriptions, but the fee would still
24 not be a barrier, correct?

25 MS. COLEMAN: Objection to

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2 form and to scope.

3 A. Yes, I would say that's
4 correct.

5 Q. Is it correct that your
6 opinion is not based on an analysis of
7 the legal meaning of U&C?

8 A. Yes, my opinion is that of an
9 economist.

10 Q. In fact, your opinion offers
11 "A method of addressing membership fees
12 as part of the discount program,"
13 correct?

14 A. My opinion offers a method
15 for calculating the true U&C -- I'm
16 sorry, PSC price, so the prices paid by
17 PSC members, which, in my opinion,
18 includes the membership fee, and yes, I
19 offered a method of doing that.

20 Q. Right. And your method was
21 -- strike that.

22 Your opinion is that the
23 membership program at Walgreens
24 constitutes a two-part pricing
25 strategy, and that from an economist

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2 perspective, the "price" of any of
3 these PSC prescription drugs purchased
4 would include the membership fee,
5 correct?

6 A. Yes, my opinion with respect
7 to, you know, I have other opinions,
8 but my opinion with respect to the PSC
9 price is that, yes, it would include a
10 portion of the membership fee if people
11 paid, you know, purchased more than one
12 prescription during the year.

13 Q. And that's from an
14 economist's perspective, correct?

15 A. Yes.

16 Q. You're not offering an
17 opinion as to how U&C should be
18 calculated from a legal perspective,
19 right?

20 A. Correct.

21 Q. And you're not offering an
22 opinion as, that's based on an analysis
23 of the pharmaceutical industry's
24 understanding of the U&C, either, are
25 you?

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2 A. That's correct.

3 Q. You also don't offer an
4 opinion as to whether PSC
5 administrative or operational costs
6 should be excluded from U&C; is that
7 correct?

8 A. Correct. I don't offer any
9 opinions about the U&C.

10 Q. Are you aware whether anyone
11 has offered an opinion in this case
12 that PSC administrative or operational
13 costs should be excluded from U&C?

14 A. No, I'm aware that there have
15 been opinions offered in this case
16 about the U&C. But I don't know what,
17 you know, specifically what they say
18 with respect to what should be included
19 and not included.

20 MR. SHINGLER: Objection,
21 nonresponsive, strike everything
22 after the initial affirmation.

23 Q. If the court in this case
24 determines that U&C excludes
25 administrative and operational costs,

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2 think that the only basis for
3 understanding the meaning of U&C is
4 from your economic perspective, do you?

5 MS. COLEMAN: Same objection.

6 A. I don't opine on anything to
7 do with the U&C.

8 Q. I'm asking you whether you
9 think that the only basis for
10 understanding the meaning of U&C is
11 from your own economic perspective.

12 MS. COLEMAN: Objection to
13 form.

14 A. I don't have an economic
15 perspective on the U&C.

16 Q. Would you agree that there
17 may be different understandings as to
18 the meaning of U&C pricing that could
19 be based on industry standards and
20 practices in the pharmacy industry?

21 MS. COLEMAN: Objection to
22 scope.

23 A. I don't have any opinions on
24 the U&C.

25 Q. Have you read -- strike that.

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2 think we are concluding the

3 deposition.

4 THE VIDEOGRAPHER: Very good,

5 I'll read us off. The time is

6 approximately 1:34 p.m., this

7 concludes today's testimony, we are

8 off the record.

9 (Time noted: 1:33 p.m.)

10 MR. SHINGLER: We'll take a

11 rough.

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CERTIFICATION

I, JEREMY RICHMAN, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of May, 2023.

A handwritten signature in dark ink, appearing to read 'Jeremy Richman', with a long horizontal flourish extending to the right.

JEREMY RICHMAN